

18 October 1978

Executive Registry

OLC #78-3257

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

SUBJECT: Reporting Activities of Questionable
Legality or Propriety to the SSCI and HPSCI

REFERENCE: Letter to you from the President, dated
19 September 1978

1. Action Requested: Your review and approval of the attached proposed letter to Bob Lipshutz.

2. Background: A few days ago at the morning staff conference you referred to a recent letter from the President, copy attached at Tab A, prescribing the manner in which Agency activities of questionable legality or propriety are to be reported to "the appropriate congressional committees." You expressed some concern about this letter and asked me for a memorandum setting forth my views.

3. The President's letter implements Section 3-403 of Executive Order 12036, which provides in relevant part that:

Under such procedures as the President may establish and consistent with applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative Branches and by law to protect sources and methods, the Director of Central Intelligence and heads of departments and agencies of the United States involved in intelligence activities shall:

* * * *

Report in a timely fashion to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

4. It is clear that the President looked principally to the JCB for advice as to the implementation of Section 3-403, and there is no doubt that the President's letter in fact was drafted by the Board. I know that because the letter is very nearly identical to a draft that Burt Wides sent me for comment last April. The earlier draft, together with Burt's note to me dated 4 April, are attached at Tab B. The comments I sent back are attached at Tab C.

5. The September letter differs from the April draft only in that (a) the last two paragraphs have been added, and (b) the first paragraph does not indicate that similar letters were sent to other heads of intelligence agencies. I assume that the letter change is merely stylistic and that in fact such other letters were sent.

6. At this juncture I doubt there is anything to be gained by taking an appeal. The two new last paragraphs go some distance towards meeting the objections I raised to the April draft. For the rest, I think we can live with these procedures. Whether the SSCI and HPSCI can live with them, however, is another question, and it is one that takes on extra importance in light of the commitments that you made during your confirmation hearings (see page 39 of the hearing transcript, copy attached at Tab D). As I see it, even apart from your commitments, the oversight committees would be plainly entitled to know what reporting procedures have been established by the President. Under the circumstances, given that the established procedures do not coincide in all respects with your commitments, the case favoring disclosure to the committees is that much more compelling. I would therefore favor a note to Lipshutz asking clearance to make copies of the President's letter available to the SSCI and HPSCI.

7. Recommendation: That you sign the attached letter to Lipshutz.

[Redacted Signature Box]

Anthony A. Lapham

STAT

Attachments

OGC:AAL:sin

1 - DDCI

1 - ER via Ex Secty

1 - IG

1 - OLC

1 - OGC



Washington D.C. 20505

23 OCT 1978

The Honorable Robert J. Lipshutz
Counsel to the President
The White House
Washington, D. C. 20500

Dear Bob:

The President's letter of 19 September, copy enclosed, implemented Section 3-403 of Executive Order 12036 by establishing a standard that prescribes the manner in which Agency activities of questionable legality or propriety are to be reported to the "appropriate congressional committees." I assume that for these purposes the "appropriate congressional committees" are the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, there being no others mentioned in Section 3-403.

As you know, during my confirmation hearings before the SSCI in February 1977, I made certain commitments with respect to the reporting of questionable activities. A copy of the relevant portion of the hearing transcript is enclosed. Even apart from these commitments, I believe the two oversight committees would have a clear right to be informed regarding the reporting standard established by the President. Under the circumstances, given that the President's standard does not coincide in all respects with my commitments, it seems to me imperative that the committees be informed. Accordingly, it is my suggestion that you transmit copies of the President's letter to the SSCI and HPSCI, together with a covering note of some sort, or that you authorize me to do so. I would appreciate it if you would let me have your reaction to this suggestion.

Yours,

/s/ Stansfield Turner

STANSFIELD TURNER

Enclosures

THE WHITE HOUSE
WASHINGTON
September 19, 1978

To Admiral Turner

As I stated in my July 27, 1977, letter to Senator Inouye, I consider intelligence abuses to be of such import that I intend to deal personally with such matters, including the obligation of the Executive Branch to inform the appropriate congressional committees. Therefore, I am writing, pursuant to Section 3-4 of Executive Order 12036, to indicate the appropriate procedures for reporting to congressional committees "... information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned."

The CIA should continue to report to the Intelligence Oversight Board activities which raise questions of legality or propriety. The IOB will review the matter and, if it raises a serious question, report it to me with its recommendations. If you feel that the gravity of a matter is such that it should be reported directly to me, the information also should be provided at the same time to the IOB so that it can begin its review promptly.

After considering the reports of the CIA and the IOB and, on questions of legality, the judgment of the Attorney General, I will review any determinations that an activity is illegal or improper, the proposed corrective action, and the manner and timing of reporting to the Congress. You will then make the appropriate report on the matter to the congressional committees, except when I communicate the matter to them directly.

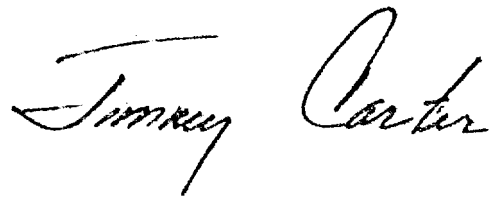
In the case of questions of legality or propriety which you believe are so minor that they clearly do not need to be brought to my attention, you should continue to

inform congressional committees, as well as the IOB, in a timely manner. You may, of course, at any time suspend an activity which raises a serious question of legality or impropriety, until a final determination is made whether the activity should be modified or discontinued and what other corrective action is required.

If in your judgment special circumstances require reporting an illegal or improper activity to Congress within a time period shorter than those outlined here, you should so indicate at the time the matter is reported to the IOB or to me.

In any event, you should discuss this concern either with myself or the IOB before undertaking to report the matter to Congress ahead of this timetable.

Sincerely,

A handwritten signature in cursive script, reading "Jimmy Carter". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Admiral Stansfield Turner, USN
Director of Central Intelligence
Washington, D.C. 20505

OGC 78-2120
4-5-78

THE WHITE HOUSE
WASHINGTON

IOB

April 4, 1978

NOTE FOR TONY LAPHAM, CIA

Here are the Board's proposed guidelines which I discussed with you, for reporting intelligence abuses to Congress under Section 3-4 of the new Executive Order. It was suggested that the President would probably prefer to prescribe them in a letter to the principals, rather than a more formal promulgation. Accordingly, they are in that form.

Please let me know the Agency's views on this, unless the Director wants to communicate them directly to Tom Farmer.

Burt Wides

IOB DRAFT

April 3, 1978

Procedures for Implementing Section 3-4 of E. O. 12036

To Admiral Turner (similar letters will be sent to SECDEF & Director, FBI)

As I stated in my July 27, 1977 letter to Senator Inouye, I consider intelligence abuses to be of such import that I intend to deal personally with such matters, including the obligation of the Executive Branch to inform the appropriate Congressional committees. Therefore, I am writing to you and the other heads of intelligence agencies, pursuant to Section 3-4 of Executive Order 12036, to indicate the appropriate procedures for reporting to Congressional committees "... information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned."

The CIA should continue to report to the Intelligence Oversight Board activities which raise questions of legality or propriety. The IOB will review the matter and, if it raises a serious question, report it to me with its recommendations. If you feel that the gravity of a matter is such that it should be reported directly to me, the information also should be provided at the same time to the IOB so that it can begin its review promptly.

After considering the reports of the CIA and the IOB and, on questions of legality, the judgment of the Attorney General, I will review any determinations that an activity is illegal or improper, the proposed corrective action, and the manner and timing of reporting to the Congress. You will then make the appropriate report on the matter to the Congressional committees, except when I communicate the matter to them directly.

In the case of questions of legality or propriety which you believe are so minor that they clearly do not need to be brought to my attention, you should continue directly to inform Congressional committees, as well as the IOB, in a timely manner. You may, of course, at any time suspend an activity which raises a serious question of legality or impropriety, until a final determination is made whether the activity should be modified or discontinued and what other corrective action is required.

(for President Carter's signature)

DRAFT

Washington, D.C. 20505

OGC 78-2247

7 April 1978

NOTE FOR: Burton V. Wides, Esq.
Intelligence Oversight Board

FROM: Anthony A. Lapham
General Counsel

SUBJECT: Procedures for Implementing Section 3-403 of E. O. 12036


1. I think the proposed draft letter for the President's signature, outlining procedures implementing Section 3-403 of E. O. 12036, does not represent the wisest approach and will be objectionable both to the SSCI and the HPSCI.

2. In the first place, the letter does not unequivocally state that the two Committees will receive intelligence agency reports concerning illegal or improper activities. Direct reporting would be authorized by the draft only with respect to "minor" questions of legality or propriety. More major matters would be reported only if they first reached the President, which they might or might not, and then only in a manner and at a time specified by the President on a case-by-case basis. Aside from the negative reactions they are likely to arouse in the two Committees, these procedures would be cumbersome and difficult to apply because of the personal role assigned to the President.

3. I would favor a simpler approach, namely, a procedure providing that reports regarding questionable intelligence activities are to be furnished to the two Committees within 30 days of the dates on which the same matters are reported to the IOB. That 30-day interval would allow time for IOB and Justice Department review, and for such corrective action as might be required.

4. If the Committees were to send us quarterly requests for reports on questionable activities, is it not your view, as it is mine, that we would have no good choice except to comply? And if that is so, then what is to be gained by adopting the procedures outlined in the draft letter rather than the simpler procedures that I suggest? I think there is nothing to be gained.

5. John Waller has seen this note and indicated his agreement with the views expressed.



Anthony A. Lapham

STAT

The CHAIRMAN. The committee will stand in recess for 15 minutes.

[A brief recess was taken.]

The CHAIRMAN. Let us now resume our hearings.

Senator HUDDLESTON?

Senator HUDDLESTON. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Mathias.

Senator MATHIAS. Admiral, under Executive Order 11905 the General Counsel of the Central Intelligence Agency is required to make reports to the Intelligence Oversight Board with respect to any improprieties that may come to his attention within the Central Intelligence Agency. Now, my question to you is, would you, as DCI, provide this committee with the substance of those reports—and I am careful to say the substance, having in mind our colloquy this morning as to certain fine points, but with the substance of those reports, so that the committee can carry out the oversight function with respect to any improprieties which might arise in the future.

Admiral TURNER. Yes, sir.

Senator MATHIAS. Now, in the same connection, Executive Order 11905 provides for the Intelligence Oversight Board to report to the President any activities which it deems to be improper and which it discovers within the intelligence community as a whole.

Will you, as Director, provide this committee with the substance of those reports, so that the committee can carry out its oversight function again?

Admiral TURNER. Yes, sir.

Senator MATHIAS. So that we get it at two different sequential stages.

Admiral TURNER. I see the difference you are—

Senator MATHIAS. In the event that it moves to two different, sequential stages.

Admiral TURNER. Yes.

Senator MATHIAS. Well, I am very gratified to have your unequivocal answer to those two questions.

Admiral TURNER. I may be in for unequivocal problems, but I will—

Senator MATHIAS. Well, I don't expect that you will. I hope that we won't have such questions arising, but I think it is of the greatest importance for this committee to be advised of them if those problems do exist.

Now, turning to another question, in our original study of the intelligence community, one of the most difficult problems that we observed was the lack of statutory charters governing the activities of different elements of the intelligence community. Where there was no statutory charter, the boundaries of jurisdiction were very difficult to define. They could lack permanence. Individuals who might be affected by the activities of the community would find it difficult to ascertain exactly where their rights began and where they ended.

It has been a subject of concern in the Congress that we should develop statutory charters for the different elements of the community that are not governed by charters at this time.

Do you have any problem in working with the Congress in the development of that kind of statutory base?